

REPORT - PLANNING COMMISSION MEETING
October 10, 2002

Project Name and Number: SAN JOSE QIGONG ACUPRESSURE – (PLN2003-00061)

Applicant: Hai Bin Zhao

Proposal: To consider a Planned District Minor Amendment to allow the practice of acupressure (massage) in an existing tenant space

Recommended Action: Approve, based on findings and subject to conditions

Location: 39271 Mission Boulevard, Suite 103 (Central Planning Area)

Assessor Parcel Number(s): 507 0630-033-00

Area: 820 square feet of floor area

Owner: John McIntosh

Agent of Applicant: Judy Hsu

Consultant(s): None

Environmental Review: Categorically exempt from review under CEQA per Section 15303 (Class 3) pertaining to New Construction or Conversion of Small Structures

Existing General Plan: Office Commercial

Existing Zoning: P-86-2 Planned District

Existing Land Use: Office complex

Public Hearing Notice: Public hearing notification is applicable. A total of 37 notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Burnham Place, Calle Amigo Drive, Gallaudet Drive, Mission Boulevard and Walnut Avenue. The notices to owners and occupants were mailed on September 30, 2002. A Public Hearing Notice was delivered to *The Argus* on September 25, 2003, to be published by September 30, 2002.

Background and Previous Actions: The applicant, Mr. Zhao, states that he has practiced acupressure for over 30 years, beginning in China, where acupressure is a traditional therapy. After coming to the United States ten years ago, he started a practice in San Jose under the name San Jose Qigong Acupressure Center. He relocated his practice to the current location in Fremont in 1993. At that time, he registered the establishment with the City's Revenue and Treasury Division, as required, and received approval from Planning and other staff as similar to a medical use. Ordinances adopted subsequently have clarified that, under California and Fremont codes, acupressure is not similar to a medical use.

An investigator with the Medical Board of California recently brought the question of whether acupressure was approved for the subject location to the attention of the City's License Authority. Upon investigation and a review of current City ordinances, it was determined that the use should in fact be classified as a massage establishment, which, as such, has not been approved.

Project Description: The applicant provides acupressure treatments to patients who suffer from pain or a variety of illnesses. He also instructs his patients on an individual basis in the performance of breathing and visualization

(*qigong*) techniques to assist in their healing. The applicant sub-leases his office from an acupuncturist/herbalist, and another acupuncturist works in the office as well. The applicant's acupressure practice operates separately from the acupuncture practice that takes place in the same office. The applicant's practice operates from 9 a.m. to 6 p.m. Monday through Saturday.

For the Planning Commission's information, following are definitions of acupressure and qigong found on the World Wide Web:

<i>Term</i>	<i>Definition</i>	<i>Source</i>
Acupressure	The application of pressure (as with the thumbs or fingertips) to the same discrete points on the body stimulated in acupuncture ... used for its therapeutic effects (as the relief of tension or pain) -- compare SHIATSU	Merriam-Webster's Collegiate Dictionary (www.m-w.com)
Qigong (pronounced "chee gung")	A self-healing art that combines movement and meditation	Qigong Association of America (www.qi.org)

Project Analysis:

General Plan Conformance: The existing General Plan land use designation for the project site is Office Commercial. Under General Plan Policy LU 2.37, all office uses are allowed. The proposed project may be considered consistent with the General Plan because this use has functioned heretofore in a manner similar to an office use, and staff believes it will continue to function in such a manner if the recommended conditions are adopted.

Zoning Regulations:

Land Use Permit Requirements: Under today's zoning regulations, massage establishments require approval of a Conditional Use Permit by the Planning Commission. Because the proposed establishment is within a planned district zone, the required *Conditional Use Permit* takes the form of a *Planned District Minor Amendment*.

Planned District: The particular Planned District where the San Jose Qigong Acupressure Center is located (P-86-2) allows "Medical and Dental Offices" and "Any other service use that the Zoning Administrator finds is similar in nature, function and operation to permitted uses". The latter clause in the planned district conditions gives the Zoning Administrator and/or Planning Commission some discretion over uses at this specific location. The C-O Administrative Office District, on which this planned district is based, also provides guidance to the Planning Commission. The C-O zoning district also allows health services but does not allow massage establishments.

Zoning History: In 1993, when the San Jose Qigong Acupressure Center opened in Fremont, the Zoning Ordinance did not have a definition for massage or acupressure or any stated policy on whether acupressure could be considered similar to a medical use. While subsequent zoning text amendments have clarified that massage, including acupressure, is treated differently from a medical use, this was not clear at the time the business license was approved for this establishment.

Considerations Regarding Massage Establishment License: As most recently revised, Fremont Municipal Code Section 8-22148.05(a) provides that applications for new conditional use permits for massage establishments are deemed incomplete until such time as the massage establishment license is approved by the license authority. The License Authority has indicated that the background check for this applicant has been completed, with positive results. The Authority has therefore tentatively approved the massage establishment license pending action by the Planning Commission.

Land Use Compatibility: No negative effects have been reported or observed since the applicant began his acupressure practice at 39271 Mission Boulevard in 1993. The applicant states that his practice is strictly therapeutic, as part of

traditional Chinese medicine, and oriented toward the treatment of disease. The clinic resembles a medical office and appears to fit well in an office complex that includes a number of medical offices.

Conclusion: Staff does not recommend that the City at this time change its current policy of classifying acupressure as massage and not as medicine or its policy not allowing massage establishments in C-O districts or planned districts with an Office Commercial General Plan designation. Staff recommends approval of the present use only, and only in the present planned district, because:

1. The particular operation has proved compatible with the surrounding land uses as described above. No ill effects have been observed.
2. It would impose a hardship on the applicant to require him to cease operating a practice that the City initially approved.

The Planning Commission's guidance has been sought because:

3. Massage services are not generally allowed in office commercial areas.
4. Where allowed, massage services generally require Planning Commission review.
5. The City has an interest in ensuring that this practice, or any successor practice, is subject to all the normal conditions for a massage practice.

Development Impact Fees: This project is not subject to citywide Development Impact Fees. Massage is not classified as a "higher" use than a medical or other office use for purposes of impact fees.

Environmental Analysis: This project is categorically exempt from environmental review per *CEQA Guidelines* Section 15303 (Class 3) pertaining to New Construction or Conversion of Small Structures.

Response from Agencies and Organizations: No public agency or neighbor has expressed any concern with this application.

Enclosures:

Exhibit "A"	Site Plan and Floor Plan
Exhibit "B"	Findings and Conditions
Exhibit "C"	Ordinance No. 2473 (Fremont Municipal Code Title IV, Chapter 7)
	Statement of Proposed Operation

Exhibits:

Exhibit "A"	Site Plan and Floor Plan
Exhibit "B"	Findings and Conditions

Recommended Actions:

1. Hold public hearing.
2. Find PLN2003-00061 is in conformance with the relevant provisions of the City's General Plan.
3. Approve PLN2003-00061, as shown on Exhibit "A", based on the findings and subject to the conditions on Exhibit "B".

EXHIBIT "B"
Findings and Conditions of Approval
SAN JOSE QIGONG ACUPRESSURE – (PLN2003-00061)
39271 Mission Boulevard

FINDINGS:

The findings below are made on the basis of information contained in the staff report to the Planning Commission dated October 10, 2002, which is incorporated herein by reference:

- (a) The site is suitable and adequate for the proposed use. This is an improved commercial site with adequate access and on-site parking.
- (b) The proposed use is consistent with the General Plan for the reasons given in the staff report.
- (c) The proposed use and design would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services. No changes to the existing building are contemplated.
- (d) The proposed use would not have a substantial adverse economic effect on nearby uses. Properly licensed and managed acupressure clinics have not been found to have an adverse effect on neighboring office or other uses.
- (e) The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood or the community at large. The City recognizes that acupressure is a viable professional field offering the public valuable health and therapeutic services. Properly licensed and managed acupressure clinics have not been found to have adverse effects on persons residing in the immediate vicinity.

CONDITIONS OF APPROVAL:

A. General

- A-1 One acupressure service is authorized to operate at 39271 Mission Boulevard, Suite 103, subject to the following conditions.
- A-2 The use shall operate in conformance with Exhibit "A" (Site Plan and Floor Plan).

B. Requirements Before Operation May Commence

- B-1 The licensee shall obtain, and operate only pursuant to, a Massage Establishment Permit issued by the City's License Authority.
- B-2 Any person providing acupressure (or any other massage service) at this location shall hold a valid Massage Technician Permit issued by the City's License Authority.
- B-3 The licensee shall sign a copy of these conditions of approval, with Chapter 7 of Title IV of the Fremont Municipal Code attached as Exhibit "C" hereto, acknowledging he has read and understands the conditions and regulations.

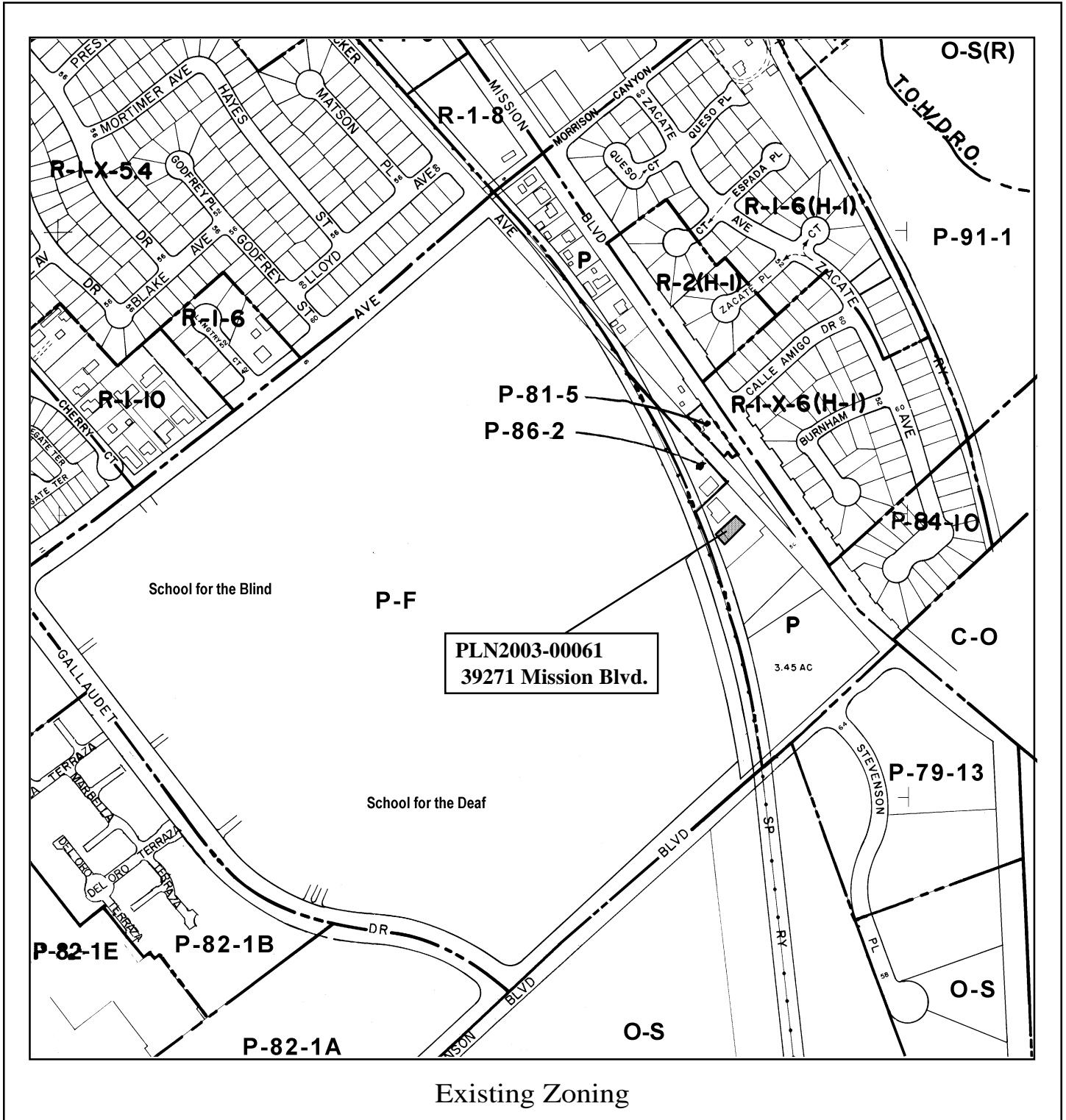
C. Ongoing Requirements

- C-1 The use shall be in compliance at all times with all provisions of Chapter 7 of Title IV of the Fremont Municipal Code (Exhibit "C" attached hereto).
- C-2 Hours of operation shall be from 9:00 a.m. to 6:00 p.m., except as modified under Condition D-2 below. No person shall administer any acupuncture, massage or other treatment except during approved hours.
- C-3 No adult entertainment shall take place in this establishment.

D. Change of Ownership; Modification and Revocation of Use Permit

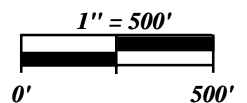
- D-1 In case of a transfer of ownership, the new licensee shall sign a Massage Establishment Ownership Transfer Agreement provided by the Zoning Administrator, acknowledging these conditions of approval, with Chapter 7 of Title IV of the Fremont Municipal Code attached as Exhibit "C" hereto. The signed agreement shall be filed with the Planning Division and with the Revenue and Taxation Division (Finance Department). Failure to comply with this requirement may result in revocation of this approval by the Zoning Administrator or Planning Commission.
- D-2 Minor modifications to this approval consistent with the provisions of Chapter 7 of Title IV of the Fremont Municipal Code may be made subject to the review and approval of the Development and Environmental Services Director if such modifications are in keeping with the intent of the original approval.
- D-3 If the use of Suite 103 for acupuncture ceases for 182 consecutive days, this approval shall be void. Thereafter, a new Planning Commission approval shall be required if the site is to be used again for acupuncture or other massage treatments.
- D-4 If the Development and Environmental Services Director finds evidence that conditions of approval have not been fulfilled or that the use or uses has or have resulted in a substantial adverse effect on the health, and/or general welfare of users of adjacent or proximate property, or have a substantial adverse impact on public facilities or services, the Director may refer this approval to the Planning Commission for review. If, upon such review, the Commission finds that any of the results stated above have occurred, the Commission may modify or revoke this approval.

INFORMATIONAL

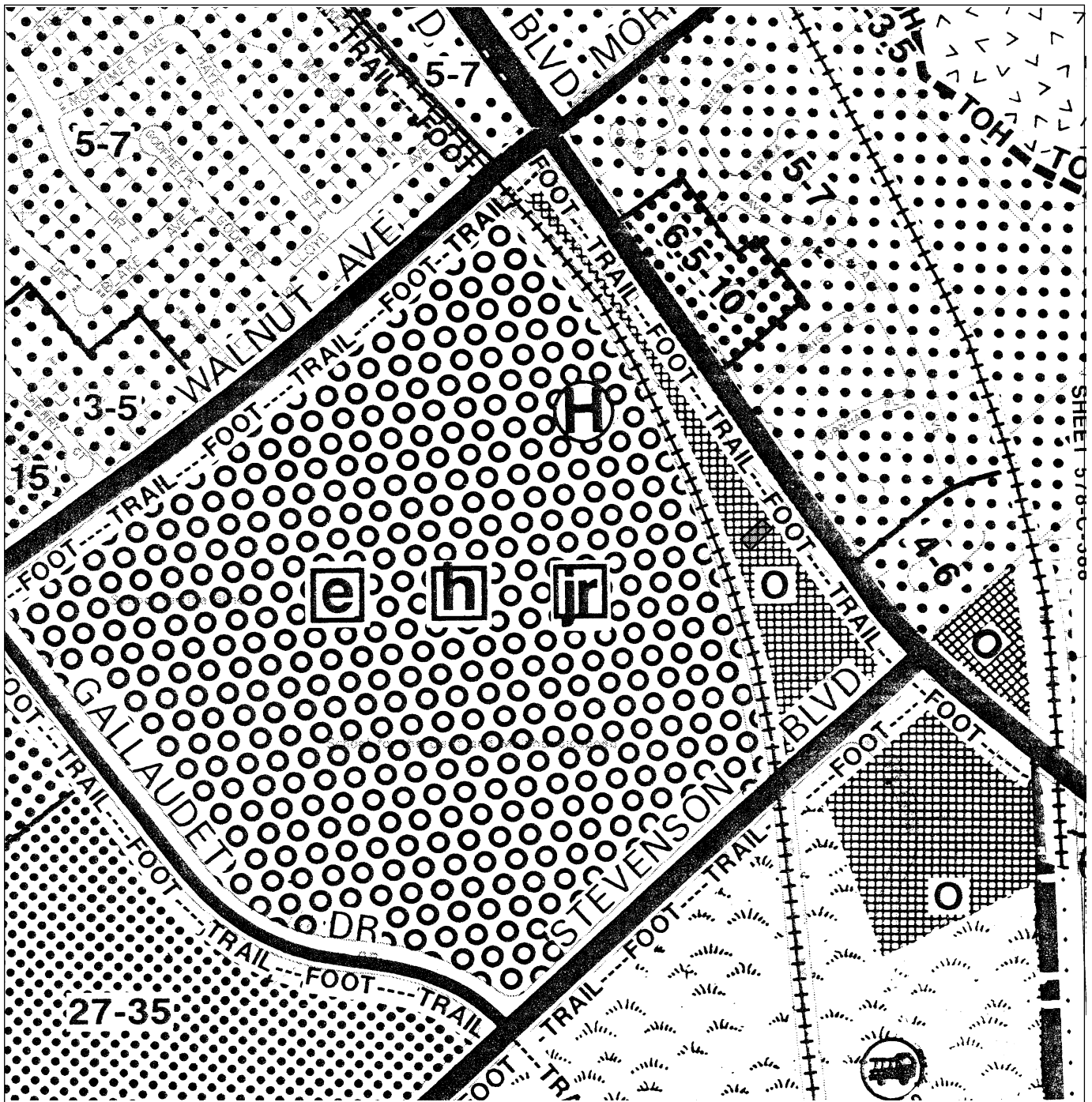


Project Number: PLN203-00061 (PD MINOR AMENDMENT)
Project Name: San Jose Qigong Acupressure
Project Description: To consider a Planned District Minor Amendment to allow the practice of massage (acupressure) in an existing tenant space located in the Central Planning Area.

Note: Prior arrangements for access are not required for this site.



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Existing General Plan

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